

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 18	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2012 - * 109	Amendment No. (req. for Amendments *) 1
Filing by NASDAQ Stock Market Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934				
Initial * <input type="checkbox"/>	Amendment * <input checked="" type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>
			Section 19(b)(3)(B) * <input type="checkbox"/>	
			Rule	
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(6)
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934	
Section 806(e)(1) <input type="checkbox"/>		Section 806(e)(2) <input type="checkbox"/>	Section 3C(b)(2) <input type="checkbox"/>	
Exhibit 2 Sent As Paper Document <input type="checkbox"/>		Exhibit 3 Sent As Paper Document <input type="checkbox"/>		
<b>Description</b>				
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).				
<input type="text"/>				
<b>Contact Information</b>				
Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.				
First Name *	Erika	Last Name *	Moore	
Title *	Associate General Counsel			
E-mail *	erika.moore@nasdaqomx.com			
Telephone *	(301) 978-8490	Fax	(301) 978-8472	
<b>Signature</b>				
Pursuant to the requirements of the Securities Exchange Act of 1934,				
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.				
(Title *)				
Date	12/12/2012	Executive Vice President and General Counsel		
By	Edward S. Knight	<input type="text"/>		
(Name *)		<input type="text"/>		
NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.				
<input type="text" value="Edward S Knight"/>				

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

The NASDAQ Stock Market LLC (“Nasdaq”) is filing this partial amendment to SR-NASDAQ-2012-109, which was published for comment in the Federal Register on October 15, 2012.<sup>1</sup>

\* \* \* \* \*

1. On pages 3-4 of the filing, please replace the text of the second and third paragraphs under “2. Procedures of the Self-Regulatory Organization” with the following:

Proposed Nasdaq Listing Rule 5605(d)(3), which requires compensation committees to have the specific responsibilities and authority necessary to comply with Rule 10C-1(b)(2), (3) and (4)(i)-(vi) under the Exchange Act, shall be effective on July 1, 2013. To the extent a Company does not have a compensation committee in the period before the final implementation deadline applicable to it as outlined in the paragraph below, the provisions of this rule shall apply to the Independent Directors who determine, or recommend to the board for determination, the compensation of the chief executive officer and all other Executive Officers of the Company.

Companies must comply with the remaining provisions of the amended listing rules, as set forth in proposed Nasdaq Listing Rule 5605(d) and IM-5605-6, by the earlier of: (1) their first annual meeting after January 15, 2014; or (2) October 31, 2014. Until a Company is required to comply with a particular provision of the amended listing rules, it must continue to comply with the corresponding provision, if any, of Nasdaq’s existing listing rules relating to Independent Director oversight of executive compensation, which have been redesignated as Nasdaq Listing Rule 5605A(d) and IM-5605A-6.

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<sup>1</sup> See Securities Exchange Act Release No. 68013 (October 9, 2012), 77 FR 62563 (October 15, 2012) (SR-NASDAQ-2012-109).

2. On pages 23-24 and 59-61 of the filing, please replace the text of the last two paragraphs under the heading “Compensation Committee Charter” with the following:

Finally, the requirement for the charter to specify the compensation committee responsibilities and authority set forth in proposed Nasdaq Listing Rule 5605(d)(3) is similar to Nasdaq’s current listing rule relating to audit committee charters.<sup>2</sup> Proposed Nasdaq Listing Rule 5605(d)(3) implements the requirements of Section 10C(b)-(e) of the Exchange Act and Rule 10C-1(b)(2), (3) and (4)(i)-(vi) thereunder. Specifically, the proposed listing rule requires a compensation committee to have the specific responsibilities and authority necessary to comply with Rule 10C-1(b)(2), (3) and (4)(i)-(vi) relating to the retention, compensation, oversight and funding of compensation consultants, legal counsel and other compensation advisers, as well as the requirement to consider the six independence factors enumerated in Rule 10C-1(b)(4) before selecting, or receiving advice from, such advisers.<sup>3</sup>

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<sup>2</sup> See Nasdaq Listing Rule 5605(c)(1)(D), which requires that an audit committee charter set forth the specific audit committee responsibilities and authority set forth in Nasdaq Listing Rule 5605(c)(3). Nasdaq Listing Rule 5605(c)(3) states that an audit committee must have the specific responsibilities and authority necessary to comply with Rule 10A-3(b)(2), (3), (4) and (5) under the Exchange Act, with certain exemptions. Rule 10A-3(b)(2), (3), (4) and (5) under the Exchange Act concerns responsibilities relating to: (i) registered public accounting firms; (ii) complaints relating to accounting, internal accounting controls or auditing matters; (iii) authority to engage advisors; and (iv) funding as determined by the audit committee.

<sup>3</sup> The independence factors are: (i) the provision of other services to the issuer by the person that employs the adviser (the “Employer”); (ii) the amount of fees received from the issuer by the Employer, as a percentage of the total revenue of the Employer; (iii) the policies and procedures of the Employer that are designed to prevent conflicts of interest; (iv) any business or personal relationship of the adviser with a member of the compensation committee; (v) any stock of the issuer owned by the adviser; and (vi) any business or personal relationship of the adviser or the Employer with an executive officer of the issuer. See 17 CFR 240.10C-1(b)(4).

The intent of Rule 10C-1(b)(4)(i)-(vi) is to require compensation committees to consider the independence factors when selecting *any* compensation consultant, legal counsel or other compensation adviser, other than in-house legal counsel.<sup>4</sup> Accordingly, Nasdaq intentionally has deleted the word “independent” prior to “legal counsel” to avoid confusion and capture any legal counsel, other than in-house legal counsel.

Rule 10C-1 permits Nasdaq to identify other relevant independence factors that a compensation committee must consider when selecting a compensation consultant, legal counsel or other adviser.<sup>5</sup> Nasdaq considered whether to adopt other independence factors, but ultimately concluded that the six independence factors enumerated in Rule 10C-1 will provide compensation committees with a broad and sufficient range of facts and circumstances to consider before selecting, or receiving advice from, a compensation adviser. Like the Commission, Nasdaq seeks to emphasize that a compensation committee is not required to retain an independent compensation adviser; rather, a compensation committee is required only to consider the six independence factors

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<sup>4</sup> See the Adopting Release, at 38433 (stating that “This instruction will not affect the obligation of a compensation committee to consider the independence of outside legal counsel or compensation consultants or other advisers retained by management or by the issuer. We believe that information gathered from an independence assessment of these categories of advisers will be useful to the compensation committee as it considers any advice that may be provided by these advisers. In addition, excluding outside legal counsel or compensation consultants retained by management or by the issuer from the required independence assessment may not be competitively neutral, since, as some commentators pointed out, they often perform the same types of services as the law firms and compensation consultants selected by the compensation committee.”)

<sup>5</sup> See 17 CFR 240.10C-1(b)(4).

enumerated in Rule 10C-1(b)(4) before selecting, or receiving advice from, a compensation adviser.<sup>6</sup>

\* \* \* \* \*

3. On pages 28-29 and 65 of the filing, please replace the text of footnote 68 with the following:

As discussed below under “Smaller Reporting Companies,” Nasdaq is proposing a new phase-in schedule for a Company ceasing to be a Smaller Reporting Company. By six months from the Start Date (as defined below), such a Company must certify to Nasdaq that it has adopted a formal written compensation committee charter including the content specified in Nasdaq Listing Rule 5605(d)(1)(A)-(D).

\* \* \* \* \*

4. On pages 30-31 and 67 of the filing, please replace the paragraph immediately prior to the heading “Effective Dates/Transition” with the following:

Nasdaq also proposes to allow a Company that has ceased to be a Smaller Reporting Company to phase-in a fully-compliant compensation committee. Pursuant to Rule 12b-2 under the Act, a Company tests its status as a Smaller Reporting Company on an annual basis at the end of its most recently completed second fiscal quarter.<sup>7</sup> A Company with a public float of \$75 million or more as of the last business day of its second fiscal quarter as calculated pursuant to Rule 12b-2 will cease to be a Smaller Reporting Company as of the beginning of the next fiscal year (the “Start Date”).

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<sup>6</sup> See the Adopting Release, at 38432-3 (stating that “neither the [Dodd-Frank] Act nor [Rule 10C-1] requires a compensation adviser to be independent, only that the compensation committee consider the enumerated independence factors before selecting a compensation adviser. Compensation committees may select any compensation adviser they prefer, including ones that are not independent, after considering the six independence factors outlined in the [Rule 10C-1].”)

<sup>7</sup> See 17 CFR 240.12b-2.

By six months from the Start Date (i.e., by six months after the beginning of its fiscal year), a Company that has ceased to be a Smaller Reporting Company must comply with the requirements of Rule 5605(d)(3) relating to certain compensation committee responsibilities and authority.<sup>8</sup> In addition, such a Company may phase in its compliance with the additional compensation committee composition requirements of Rule 5605(d)(2) relating to the receipt of compensatory fees and affiliation as follows: (1) one member must satisfy the requirements by six months from the Start Date; (2) a majority of members must satisfy the requirements by nine months from the Start Date; and (3) all members must satisfy the requirements by one year from the Start Date. Since a Smaller Reporting Company is required to have a compensation committee comprised of at least two Independent Directors, a Company that has ceased to be a Smaller Reporting Company may not use the phase-in schedule for the minimum size requirement or the requirement that the committee consist only of Independent Directors as defined under Rule 5605(a)(2). During the phase-in schedule, a Company that has ceased to be a Smaller Reporting Company must continue to comply with the requirement to have a compensation committee comprised of at least two Independent Directors as defined under Nasdaq's existing listing rules.

\* \* \* \* \*

5. On pages 31-32 and 67-69 of the filing, please replace the text of "Effective Dates/Transition" with the following:

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<sup>8</sup> By six months from the Start Date, such a Company also must certify to Nasdaq that: (i) it has complied with the requirement in Nasdaq Listing Rule 5605(d)(1) to have a compensation committee charter including the content specified in Nasdaq Listing Rule 5605(d)(1)(A)-(D); and (ii) it has complied, or will within the applicable phase-in schedule comply, with the requirement in Nasdaq Listing Rule 5605(d)(2) regarding compensation committee composition.

Effective Dates; Transition for Companies Listed on Nasdaq as of the Effective Dates

Nasdaq proposes that Rule 5605(d)(3), relating to compensation committee responsibilities and authority, shall be effective on July 1, 2013. Specifically, this proposed rule states that a compensation committee must have the specific responsibilities and authority necessary to comply with Rule 10C-1(b)(2), (3) and (4)(i)-(vi) under the Act relating to the retention, compensation, oversight and funding of compensation consultants, legal counsel and other compensation advisers, as well as the requirement to consider the six independence factors enumerated in Rule 10C-1(b)(4) before selecting, or receiving advice from, such advisers. To the extent a Company does not have a compensation committee in the period before the final implementation deadline applicable to it as outlined in the paragraph below, the provisions of this rule shall apply to the Independent Directors who determine, or recommend to the board for determination, the compensation of the chief executive officer and all other Executive Officers of the Company. Companies should consider under state corporate law whether to grant the specific responsibilities and authority referenced in Rule 5605(d)(3) through a charter, resolution or other board action; however, Nasdaq proposes to require only that a compensation committee, or Independent Directors acting in lieu of a compensation committee, have the responsibilities and authority referenced in Rule 5605(d)(3) by July 1, 2013. Companies must have a written compensation committee charter that includes, among others, the responsibilities and authority referenced in Rule 5605(d)(3) by the implementation deadline discussed below.

In order to allow Companies to make necessary adjustments to their boards and committees in the course of their regular annual meeting schedules, Nasdaq proposes that

Companies comply with the remaining provisions of the amended listing rules, as set forth in proposed Nasdaq Listing Rule 5605(d) and IM-5605-6, by the earlier of: (1) their first annual meeting after January 15, 2014; or (2) October 31, 2014. This transition period is similar to the transition period used when Nasdaq implemented similar requirements for audit committees in 2003<sup>9</sup> and identical to the transition period proposed by the New York Stock Exchange for its rules implementing Rule 10C-1.<sup>10</sup> Nasdaq believes that harmonizing the transition periods will simplify compliance for Companies and their professional advisers.

A Company must certify to Nasdaq, no later than 30 days after the final implementation deadline applicable to it, that it has complied with the amended listing rules relating to compensation committees. Nasdaq will provide Companies with a form for this certification. Attached as Exhibit 3 is the form of certification currently intended to be used for this purpose.

During the transition period, Companies that are not yet required to comply with a particular provision of the amended listing rules relating to compensation committees must continue to comply with the corresponding provision, if any, of Nasdaq's existing listing rules, which have been redesignated as Nasdaq Listing Rule 5605A(d) and IM-5605A-6 in Nasdaq's proposal.

Nasdaq notes that the effective dates and transition periods discussed above apply to Companies listed on Nasdaq as of the effective dates of amended Rule 5605(d) and

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<sup>9</sup> See Securities Exchange Act Release No. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (SR-NASD-2002-141).

<sup>10</sup> See Securities Exchange Act Release No. 68011 (October 9, 2012), 77 FR 62541 (October 15, 2012) (SR-NYSE-2012-49).

IM-5605-6. These effective dates and transition periods are distinct from the phase-in schedules available to certain newly-listed Companies and Companies ceasing to rely on certain exemptions, which are discussed further under the heading “Phase-In Schedules”.

\* \* \* \* \*

6. On page 38 of the filing, please insert the following text under the header “9. Exhibits” between items 2 and 5 and add the attached Exhibit 3 to the filing:

3. Certification Form.

\* \* \* \* \*

7. On pages 39-40 of the filing, please replace the text of the second and third paragraphs under “I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change” with the following:

Proposed Nasdaq Listing Rule 5605(d)(3), which requires compensation committees to have the specific responsibilities and authority necessary to comply with Rule 10C-1(b)(2), (3) and (4)(i)-(vi) under the Exchange Act, shall be effective on July 1, 2013. To the extent a Company does not have a compensation committee in the period before the final implementation deadline applicable to it as outlined in the paragraph below, the provisions of this rule shall apply to the Independent Directors who determine, or recommend to the board for determination, the compensation of the chief executive officer and all other Executive Officers of the Company.

Companies must comply with the remaining provisions of the amended listing rules, as set forth in proposed Nasdaq Listing Rule 5605(d) and IM-5605-6, by the earlier of: (1) their first annual meeting after January 15, 2014; or (2) October 31, 2014. Until a Company is required to comply with a particular provision of the amended listing rules, it must continue to comply with the corresponding provision, if any, of Nasdaq’s existing

listing rules relating to Independent Director oversight of executive compensation, which have been redesignated as Nasdaq Listing Rule 5605A(d) and IM-5605A-6.

\* \* \* \* \*

8. On page 87 of the filing, please insert the following text immediately below the header “(d) Compensation Committee Requirements”:

**The provisions of this Rule 5605(d) and IM-5605-6 are operative only subject to the effective dates outlined in Rule 5605(d)(6). During the transition period until a Company is required to comply with a particular provision, the Company must continue to comply with the corresponding provision, if any, of Rule 5605A(d) and IM-5605A-6.**

\* \* \* \* \*

9. On page 89 of the filing, please replace the text under “(3) Compensation Committee Responsibilities and Authority” with the following to repeat certain language set forth in Rule 10C-1(b)(2), (3) and (4)(i)-(vi):

As required by Rule 10C-1(b)(2), (3) and (4)(i)-(vi) under the Act, the compensation committee must have the following specific responsibilities and authority.

(A) The compensation committee may, in its sole discretion, retain or obtain the advice of a compensation consultant, legal counsel or other adviser.

(B) The compensation committee shall be directly responsible for the appointment, compensation and oversight of the work of any compensation consultant, legal counsel and other adviser retained by the compensation committee.

(C) The Company must provide for appropriate funding, as determined by the compensation committee, for payment of reasonable compensation to a compensation consultant, legal counsel or any other adviser retained by the compensation committee.

(D) The compensation committee may select, or receive advice from, a compensation consultant, legal counsel or other adviser to the compensation committee, other than in-house legal counsel, only after taking into consideration the following factors:

(i) the provision of other services to the Company by the person that employs the compensation consultant, legal counsel or other adviser;

(ii) the amount of fees received from the Company by the person that employs the compensation consultant, legal counsel or other adviser, as a percentage of the total revenue of the person that employs the compensation consultant, legal counsel or other adviser;

(iii) the policies and procedures of the person that employs the compensation consultant, legal counsel or other adviser that are designed to prevent conflicts of interest;

(iv) any business or personal relationship of the compensation consultant, legal counsel or other adviser with a member of the compensation committee;

(v) any stock of the Company owned by the compensation consultant, legal counsel or other adviser; and

(vi) any business or personal relationship of the compensation consultant, legal counsel, other adviser or the person employing the adviser with an Executive Officer of the Company.

Nothing in this Rule shall be construed: (i) to require the compensation committee to implement or act consistently with the advice or recommendations of the compensation consultant, legal counsel or other adviser to the compensation committee; or (ii) to affect the ability or obligation of a compensation committee to exercise its own judgment in fulfillment of the duties of the compensation committee.

The compensation committee is required to conduct the independence assessment outlined in this Rule with respect to any compensation consultant, legal counsel or other adviser that provides advice to the compensation committee, other than in-house legal counsel. However, nothing in this Rule requires a compensation consultant, legal counsel or other compensation adviser to be independent, only that the compensation committee consider the enumerated independence factors before selecting, or receiving advice from, a compensation adviser. Compensation committees may select, or receive advice from, any compensation adviser they prefer, including ones that are not independent, after considering the six independence factors outlined above.

\* \* \* \* \*

10. On page 90 of the filing, please replace the text of “(6) Effective Dates/Transition” with the following:

**(6) Effective Dates of Rule 5605(d) and IM-5605-6; Transition for Companies Listed On Nasdaq as of the Effective Dates**

The provisions of Rule 5605(d)(3) shall be effective on July 1, 2013; to the extent a Company does not have a compensation committee in the period before the final implementation deadline applicable to it as outlined in the paragraph below, the provisions of Rule 5605(d)(3) shall apply to the Independent Directors who determine, or recommend to the board for determination, the compensation of the chief executive officer and all other Executive Officers of the Company. Companies should consider under state corporate law whether to grant the specific responsibilities and authority referenced in Rule 5605(d)(3) through a charter, resolution or other board action; however, Nasdaq requires only that a compensation committee, or Independent Directors acting in lieu of a compensation committee, have the responsibilities and authority referenced in Rule 5605(d)(3) on July 1, 2013. Companies must have a written compensation committee charter that includes, among others, the responsibilities and authority referenced in Rule 5605(d)(3) by the implementation deadline set forth in the paragraph below.

In order to allow Companies to make necessary adjustments in the course of their regular annual meeting schedule, Companies will have until the earlier of their first annual meeting after January 15, 2014, or October 31, 2014, to comply with the remaining provisions of Rule 5605(d) and IM-5605-6. A Company must certify to Nasdaq, no later than 30 days after the final implementation deadline applicable to it, that it has complied with Rule 5605(d). During the transition period, Companies that are not yet required to comply with a particular provision of revised Rule 5605(d) and IM-5605-6 must continue to comply with the corresponding provision, if any, of Rule 5605A(d) and IM-5605A-6.

\* \* \* \* \*

11. On page 91 of the filing, please replace the first sentence of the second paragraph with the following to add a reference to Rule 5605(d)(1)(A)-(C):

*A Smaller Reporting Company must have a compensation committee with a minimum of two members who are Independent Directors as defined under Rule 5605(a)(2) and a formal written compensation committee charter or board resolution that specifies the committee’s responsibilities and authority set forth in Rule 5605(d)(1)(A)-(C).*

\* \* \* \* \*

12. On page 96 of the filing, please replace the text under “(4) Phase-In Schedule for a Company Ceasing to be a Smaller Reporting Company” with the following:

Pursuant to Rule 12b-2 under the Act, a Company tests its status as a Smaller Reporting Company on an annual basis as of the last business day of its most recently completed second fiscal quarter (for purposes of this Rule, the “Determination Date”). A Company with a public float of \$75 million or more as of the Determination Date will cease to be a Smaller Reporting Company as of the beginning of the fiscal year following the Determination Date (the “Start Date”).

By six months from the Start Date, a Company must comply with Rule 5605(d)(3) and certify to Nasdaq that: (i) it has complied with the requirement in Rule 5605(d)(1) to adopt a formal written compensation committee charter including the content specified in Rule 5605(d)(1)(A)-(D); and (ii) it has complied, or within the applicable phase-in schedule will comply, with the additional requirements in Rule 5605(d)(2)(A) regarding compensation committee composition.

A Company shall be permitted to phase in its compliance with the additional compensation committee eligibility requirements of Rule 5605(d)(2)(A) relating to compensatory fees and affiliation as follows: (i) one member must satisfy the requirements by six months from the Start Date; (ii) a majority of members must satisfy the requirements by nine months from the Start Date; and (iii) all members must satisfy the requirements by one year from the Start Date.

Since a Smaller Reporting Company is required to have a compensation committee comprised of at least two Independent Directors, a Company that has ceased to be a Smaller Reporting Company may not use the phase-in schedule for the requirements of Rule 5605(d)(2)(A) relating to minimum committee size or that the committee consist only of Independent Directors as defined under Rule 5605(a)(2).

During this phase-in schedule, a Company that has ceased to be a Smaller Reporting Company must continue to comply with Rule 5605(d)(5).

\* \* \* \* \*

Nasdaq requests that the Commission approve this Amendment No. 1 on an accelerated basis pursuant to Section 19(b)(2) of the Act.<sup>11</sup> In making this request, Nasdaq notes that some of the proposed changes contained in Amendment No. 1 have

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<sup>11</sup> 15 U.S.C. 78s(b)(2).

already been subject to notice and comment in connection with the proposed NYSE rules.<sup>12</sup> In addition, this proposed Amendment No. 1 includes transition periods that are designed to give Companies sufficient time to comply with the new requirements. Finally, the proposed Amendment No. 1 makes changes designed to enhance investor protection by providing additional transparency to how compensation committees must conduct the independence analysis required by the proposals and to how Companies must transition to the new rules both upon their adoption and when a Company ceases to be a Smaller Reporting Company. While the revised phase-in schedule for a Company ceasing to be a Smaller Reporting Company is different from what Nasdaq originally proposed, the aforementioned transition periods will allow Companies sufficient time to adjust to the differences.

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<sup>12</sup> See footnote 10, supra.

**EXHIBIT 3**

Below is the form of compensation committee certification NASDAQ intends to use for Companies listed on The NASDAQ Stock Market. The actual form will be available through NASDAQ's Listing Center website (<https://listingcenter.nasdaqomx.com/>) prior to the effective date of the amended rule.

**FORM OF COMPENSATION COMMITTEE CERTIFICATION  
FOR COMPANIES LISTED ON THE NASDAQ STOCK MARKET****Instructions**

An officer of the Company must submit this certification. By completing this form, you are certifying your Company's compliance with Rule 5605(d). Companies must certify to both the charter and composition requirements contained in sections 1 and 2, respectively. Capitalized terms have the meanings given to such terms in the NASDAQ Listing Rules.

The following categories of Companies are exempt from Rule 5605(d) and are not required to submit this form: asset-backed and other passive issuers, cooperatives, limited partnerships and management investment companies registered under the Investment Company Act of 1940.

**General Company Information**

Company Name: \_\_\_\_\_

**Compensation Committee Certification****1. Compensation Committee Charter – Rule 5605(d)(1)**

- I hereby certify that the Company has adopted a formal written compensation committee charter specifying the items enumerated in Rule 5605(d)(1), and that the compensation committee will review and reassess the adequacy of the charter on an annual basis.
- For Smaller Reporting Companies Only:** I hereby certify that the Company is a Smaller Reporting Company and has adopted a formal written compensation committee charter or board resolution specifying the items enumerated in Rule 5605(d)(1)(A)-(C). (Note that in the event the Company ceases to be a Smaller Reporting Company, a new certification is required.)
- For Foreign Private Issuers Only:** I hereby certify that the Company has not adopted a formal written compensation committee charter because the Company is a Foreign Private Issuer that follows a home country practice in lieu of this requirement and has provided NASDAQ with a written statement from an independent counsel in the Company's home country certifying that the Company's practices are not prohibited by the home country laws. (Note that in the event the Company ceases to be a Foreign Private Issuer, a new certification is required.)
- For Controlled Companies Only:** I hereby certify that the Company has not adopted a formal written compensation committee charter because the Company is a Controlled Company. (Note that in the event the Company ceases to be a Controlled Company, a new certification is required.)

**2. Compensation Committee Composition – Rule 5605(d)(2)**

- I hereby certify that the Company has, and will continue to have, a compensation committee of at least two members, each of whom: (i) is an Independent Director as defined under Rule 5605(a)(2); and (ii) has not accepted directly or indirectly any consulting, advisory or other compensatory fee from the Company or any subsidiary thereof.

In addition, I hereby certify that in determining whether a director is eligible to serve on the compensation committee, the Company's board has considered, and will continue to consider, whether the director is affiliated with the Company, a subsidiary of the Company or an affiliate of a subsidiary of the Company to determine whether such affiliation would impair the director's judgment as a member of the compensation committee.

- For Companies with a Non-Independent Director based upon Exceptional and Limited Circumstances Pursuant to Rule 5605(d)(2)(B) Only:** I hereby certify that the Company has a compensation committee comprised of at least three members and is relying on the exception in Rule 5605(d)(2)(B) for one director who does not meet the requirements of Rule 5605(d)(2)(A). The board, under exceptional and limited circumstances, has determined that such individual's membership on the committee is required by the best interests of the Company and its Shareholders. When the Company ceases reliance on this exception, it will comply with the compensation committee composition requirement in Rule 5605(d)(2)(A).
- For Smaller Reporting Companies Only:** I hereby certify that the Company is a Smaller Reporting Company. Check one of the two boxes below. (Note that in the event the Company ceases to be a Smaller Reporting Company, a new certification is required.)
  - I hereby certify that the Company has, and will continue to have, a compensation committee of at least two members, each of whom is an Independent Director as defined under Rule 5605(a)(2).
  - For Smaller Reporting Companies with a Non-Independent Director based upon Exceptional and Limited Circumstances Pursuant to Rule 5605(d)(2)(B) Only:** I hereby certify that the Company has a compensation committee comprised of at least three members and is relying on the exception in Rule 5605(d)(2)(B) for one director who does not meet the requirements of Rule 5605(a)(2). The board, under exceptional and limited circumstances, has determined that such individual's membership on the committee is required by the best interests of the Company and its Shareholders. When the Smaller Reporting Company ceases reliance on this exception, it will comply with the compensation committee composition requirement in Rule 5605(d)(5).
- For Foreign Private Issuers Only:** I hereby certify that the Company has not complied with the compensation committee composition requirement under Rule 5605(d)(2)(A) because the Company is a Foreign Private Issuer that follows a home country practice in lieu of this requirement and has provided NASDAQ with a written statement from an independent counsel in the Company's home country certifying that the Company's practices are not prohibited by the home country laws. (Note that in the event the Company ceases to be a Foreign Private Issuer, a new certification is required.)
- For Controlled Companies Only:** I hereby certify that the Company has not complied with the compensation committee composition requirement under Rule 5605(d)(2)(A) because the Company is a Controlled Company. (Note that in the event the Company ceases to be a Controlled Company, a new certification is required.)
- For Companies Relying on a Phase-In Schedule Only:** I hereby certify that the Company has not complied with the compensation committee composition requirement under Rule 5605(d)(2)(A) because the Company is relying on the phase-in schedule checked below. The Company will comply fully with Rule 5605(d)(2)(A) as of the end of the phase-in schedule. The Company is relying on the phase-in schedule in:
  - Rule 5615(b)(1) for Companies listing in connection with an initial public offering (including spin-offs);
  - Rule 5615(b)(2) for Companies emerging from bankruptcy;

- Rule 5615(b)(3) for Companies transferring from other markets;
- Rule 5615(b)(4) for Companies ceasing to be Smaller Reporting Companies; or
- Rule 5615(c)(3) for Companies ceasing to be Controlled Companies.

**Company Officer Affirmation**

I am an officer of this Company. To the best of my knowledge and belief, the information provided is true and correct as of this date. The Company will promptly notify NASDAQ of any material changes to the information provided herein.

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Email: \_\_\_\_\_  
Phone Number: \_\_\_\_\_  
Date: \_\_\_\_\_

**Contact Information (If Different from Company Officer Above)**

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Email: \_\_\_\_\_  
Phone Number: \_\_\_\_\_